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MONSANTO COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TERI MICHELLE MCCALL,
individually and as successor in
interest for the estate of ANTHONY
JACKSON MCCALL, deceased.

Plaintiff.

V.

MONSANTO COMPANY

Defendant.

Case No.: 2:16-cv-01609-SJO-SS

MONSANTO COMPANY'S OPPOSITION TO PLAINTIFF'S NOTICE OF RELATED CASE

1 Despite differences in the injuries alleged and law to be applied, among
 2 others, plaintiff claims her case is related to two others pending against Monsanto
 3 Company (“Monsanto”) in this district¹ and should be transferred to the same court
 4 as *Rubio*. Plaintiff’s transfer request is based on the misguided premise that the
 5 cases are related because each involves allegations regarding glyphosate. *See*
 6 Notice of Related Case (ECF No. 4). Glyphosate is the active ingredient in
 7 Monsanto’s Roundup® herbicides, and has been approved for decades by the United
 8 States Environmental Protective Agency (“EPA”). During that time, EPA has
 9 repeatedly stated that glyphosate does not cause cancer. *See* Monsanto’s
 10 Memorandum of Points and Authorities in Support of Its Motion to Sever and
 11 Transfer or Dismiss Claims in Plaintiffs’ Amended Complaint, *Rubio v. Monsanto*
 12 *Company*, No. 2:15-cv-07426, ECF No. 47-1, at 2-3 (C.D. Cal. Nov. 9, 2015)
 13 (hereinafter “Monsanto Mot.”). Pursuant to Local Rule 83-1.3.3, Monsanto files
 14 this objection to transfer.

15 **I. TRANSFER IS FUTILE BECAUSE NEITHER *RUBIO* NOR *HUERTA*
 16 IS PROPERLY VENUED IN THIS DISTRICT.**

17 As an initial matter, transfer of plaintiff’s case to the *Rubio* court is
 18 premature and, if granted, would cause rather than eliminate judicial inefficiencies
 19 because *Rubio* is not properly venued in this district. The *Rubio* complaint contains
 20 allegations by two plaintiffs who incorrectly joined their product liability claims
 21 and who have no current connection to the Central District of California. Monsanto
 22 Mot. at 7-19. Monsanto’s motion to sever, dismiss, or transfer both plaintiffs’
 23 claims to more appropriate forums outside of this district is pending and, if granted,
 24 would leave no part of the *Rubio* complaint pending here. Similarly, although
 25 plaintiff does not request the transfer of *Huerta* to the *Rubio* court, it appears that

27 ¹ *Rubio, et. al. v. Monsanto Company*, No. 2:15-cv-07426 (C.D. Cal.) (Gee, J.);
 28 *Huerta, et. al. v. Monsanto Company, et. al.*, No. 2:16-cv-00153 (C.D. Cal.) (King,
 J.).

1 the clerk has included *Huerta* for transfer consideration. Transferring *Huerta*
 2 would create more judicial inefficiency. Although Monsanto has not yet been
 3 served with the complaint, it is clear from the face of the pleading that *Huerta* is
 4 also subject to dismissal or transfer under 28 U.S.C. §1404(a) because the key
 5 allegations therein occurred outside of the Central District of California.

6 It defies logic to transfer more cases to the *Rubio* court's docket because
 7 *Rubio* was the first filed case, when both *Rubio* and *Huerta* should be dismissed or
 8 transferred to another federal court. Such a scenario would leave the *Rubio* court
 9 with only the *McCall* case and questions about plaintiff's true motives for
 10 requesting transfer.² *See Standing Comm. on Discipline of U.S. Dist. Ct. for the*
 11 *Cent. Dist. of Cal. v. Yagman*, 55 F.3d 1430, 1443 (9th Cir. 1995).

12 **II. FACTUAL AND LEGAL DIFFERENCES BETWEEN PLAINTIFFS'**
 13 **CLAIMS ALSO MAKE TRANSFER INAPPROPRIATE.**

14 Plaintiff's argument that *Rubio*, *Huerta*, and this case share so many similar
 15 questions of law and fact as to require placement before a single judge under
 16 General Order No. 14-03 and Local Rule 83-1.3 is also meritless. Even a cursory
 17 review of the three complaints reveals that the most significant legal and factual
 18 issues presented therein are distinct from each other. For example, contrary to the
 19 assertions in plaintiff's Notice, there is no such thing as a generic "cancer" case –
 20 even from a general causation standpoint, each type of cancer is distinct, most are
 21 idiopathic, and plaintiffs' attempts to prove general causation will involve many
 22 different types of human and animal data and alleged risk factors. On an individual
 23 level, any claim about cancer causation also requires an analysis of each
 24 individual's unique medical history. Those differences are reflected in the different
 25 types of cancer at issue in these cases. Yolanda Mendoza, a plaintiff in *Rubio*, and

26 _____
 27 ² The plaintiff in the *Huerta* case is represented by one of the same counsel (R.
 28 Brent Wisner) as plaintiff here. However, a Notice of Related Case has not been
 filed in *Huerta*.

1 Brenda Huerta claim to have been diagnosed with non-Hodgkin's lymphoma as a
 2 result of their exposure to Roundup®, whereas Enrique Rubio asserts claims
 3 regarding his diagnosis with multiple myeloma. Plaintiff here alleges that doctors
 4 diagnosed her husband with large cell lymphoma that she alleges was caused by his
 5 exposure to Roundup®. *See Rubio*, Monsanto Company's Notice of Motion and
 6 Motion to Dismiss Plaintiffs' Amended Complaint, No. 2:15-cv-07426, ECF No.
 7 48-1, at 4 (C.D. Cal. Nov. 9, 2015); *Huerta*, ECF No. 2-1, at ¶ 72; Complaint, ECF
 8 No. 1 at ¶ 79. And, of course, each plaintiff has a distinct medical history.

9 Discovery and resolution of the cause of each plaintiff's (or plaintiff's
 10 decedent's) alleged cancer and what, if any, damages resulted will turn on distinct
 11 medical evidence and the various laws to be applied.³ The key fact witnesses
 12 necessary to adjudicate each plaintiff's specific causation claims, including the
 13 diagnosing and treating physicians, will be different. The expert testimony
 14 regarding each plaintiff will differ significantly with respect to the different types of
 15 cancers alleged and individualized questions of alternative risk factors for those
 16 cancers.

17 Other key differences exist among plaintiffs' claims as well, including the
 18 alleged Monsanto products at issue and the methods and extent of exposure.
 19 Further, plaintiffs assert different causes of action that in turn introduce more case-
 20 specific questions of law. For example, only the instant complaint contains a
 21 Wrongful Death allegation. Complaint, ECF No. 1, at ¶¶ 14-18. The claims
 22 asserted by the two plaintiffs in *Rubio* also differ from each other – Ms. Mendoza
 23 asserts a breach of express warranty claim that Mr. Rubio does not. In *Huerta*,
 24 plaintiff asserts unique claims against defendants other than Monsanto. Although it
 25 is true that all of plaintiffs' complaints alleged failure to warn claims, those claims

27 ³ Texas substantive law applies to and bars Enrique Rubio's claims. *See Rubio*,
 28 ECF No. 48-1, at 8-15 (C.D. Cal. Nov. 9, 2015).

1 still must be decided independently of each other because different factual
2 situations are involved and different state laws are at issue. Transfer in such
3 circumstances hinders rather than promotes judicial efficiency.

4 Because the claims of the plaintiffs in the three Central District of California
5 cases call for the application of various states' laws over varying time periods, as
6 well as an examination of diverse cancers allegedly caused by exposure to
7 Roundup®, they share very few case-specific questions of law and fact in common.
8 Therefore, burdening the docket of one court with all three cases offers no judicial
9 efficiencies.

10 **III. TRANSFER HERE WOULD TRANSFORM THIS COURT INTO A
11 MAGNET FOR UNRELATED CLAIMS.**

12 That allegations regarding exposure to glyphosate are made in all complaints
13 does not change this analysis or satisfy the requirements for transfer. If it did, this
14 Court would be required to preside over all unrelated claims of plaintiffs alleging
15 distinct exposures to, and injuries from, glyphosate-based herbicides that have no
16 connection to each other. That is clearly not the intent of General Order No. 14-03
17 and Local Rule 83-1.3. Although it is possible that certain aspects of Monsanto's
18 development of glyphosate may be relevant to discovery in both cases, much of the
19 discovery is case-specific, including issues such as product identification, use in
20 accordance with labeling instructions, and the complicated general and specific
21 causation issues discussed above. Multiple plaintiffs' counsel in these actions are
22 involved in other state and/or federal actions alleging various differing injuries from
23 glyphosate use and accordingly will be proceeding in those forums regardless of the
24 Court's ruling on plaintiff's request for transfer.

25 **IV. CONCLUSION**

26 This action does not stem from the same events and does not involve the
27 same legal or factual issues as those being litigated in *Rubio* and *Huerta*. Thus, for
28 all of the reasons discussed above, this Court should deny plaintiff's request for

1 transfer pursuant to C.D. Cal. Local Rule 83-1.3 and General Order No. 14-03.
2

3 DATED: March 14, 2016

Respectfully submitted,

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